

Message Text

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ACTION EUR-12

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C O N F I D E N T I A L USNATO 0453

E.O. 11652: GDS
TAGS: NATO PFOR PARM ICRC
SUBJ: NATO CONSIDERATION OF DRAFT PROTOCOL ON INTERNATIONAL LAW
IN ARMED CONFLICT

REF: USNATO 372 (DTG 211917Z JAN 77)

1. THERE FOLLOWS BELOW THE TEXT OF SPEAKING NOTES ON WHICH FRG REP DREW AT JANUARY 25 POLADS MEETING IN PRESENTING FRG VIEWS ON "SECURITY IMPLICATIONS FOR THE ALLIANCE OF PROVISIONS OF THE FIRST ADDITIONAL PROTOCOL TO THE GENEVA CONVENTION." FRG REP HAS DISTRIBUTED PAPER TO POLADS.

2. IN INTRODUCING SUBJECT, FRG REP SAID HE HOPED IT WOULD BE POSSIBLE TO DISCUSS THIS MATTER IN POLADS AND THAT, SUBSEQUENTLY, PERMREPS COULD ALSO REVIEW THIS SUBJECT. HE MENTIONED AS WELL THE DESIRE OF HIS AUTHORITIES FOR A MILITARY COMMITTEE STUDY OF THE MILITARY IMPLICATIONS OF THE PROTOCOL, BUT DID NOT ADDRESS THE QUESTION OF WHEN SUCH A STUDY SHOULD CONFIDENTIAL

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BEGIN.

3. FRENCH REP SAID HER AUTHORITIES SHARED FRG CONCERNS REGARDING THE PROTOCOL AND FAVORED A MILITARY COMMITTEE STUDY OF THIS MATTER.

4. ACTION REQUESTED: ANY SPECIFIC POINTS WE SHOULD MAKE REGARDING FRG SPEAKING NOTES, IF POSSIBLE IN TIME FOR FEBRUARY 1 POLAD'S MEETING.

5. BEGIN TEXT OF FRG SPEAKING NOTES:

1. IT HAS TO BE EXPECTED THAT THE GENEVA DIPLOMATIC CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS WILL END WITH ITS FOURTH SESSION WHICH WILL BEGIN IN THE SPRING AND TERMINATE IN MID-JULY 1977 AND THAT THE PROTOCOLS WILL THEN BE OPEN FOR SIGNATURE. IN VIEW OF THIS, WE SUGGEST THAT THE ALLIANCE SHOULD EXAMINE THE POSSIBLE IMPLICATIONS (ESPECIALLY OF THE PROVISIONS FOR THE PROTECTION OF THE CIVIL POPULATION CONTAINED IN SECTIONS III AND IV OF PROTOCOL NO. I) ON THE DEFENCE PLANNING OF THE ALLIANCE SINCE IT CANNOT BE RULED OUT THAT SOME ARTICLES WILL CALL INTO QUESTION THE ADMISSIBILITY UNDER INTERNATIONAL LAW OF OUR PRESENT DEFENCE PLANNING.

2. THIS CONCERN RELATES TO SOME OF THE NEW WARFARE PROVISIONS IN PART III AND PART IV OF ADDITIONAL PROTOCOL NO. I, NOTABLY ITS ARTICLES 33 AND 34, AND 46 TO 51. A CRITICAL VIEW IS TAKEN OF THE PROHIBITION OF
-ATTACKS NOT DIRECTED AT A SPECIFIC OBJECTIVE;
-ATTACKS USING METHODS AND MEANS OF COMBAT WHICH CANNOT BE DIRECTED AT A SPECIFIC MILITARY OBJECTIVE;
-ATTACKS WHOSE EFFECTS CANNOT BE LIMITED TO THE MILITARY OBJECTIVE.
IN VIEW OF THE MAJORITIES TO BE EXPECTED AT THE CONFERENCE, WE DO NOT EXPECT ANY DECISIVE CHANGES OF THESE PROVISIONS AT THE CONFIDENTIAL

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FINAL SESSION.

3. THE NEGATIVE EFFECTS WITH WHICH THE ALLIES MIGHT BE FACED CONCERNING NATO'S CONCEPT OF DETERRENCE AND DEFENCE INCLUDING ITS NUCLEAR COMPONENT COULD BE AS FOLLOWS:
-A BAN ON THE USE OF NUCLEAR WEAPONS, ESPECIALLY IN THE DENSELY-POPULATED REGION OF CENTRAL EUROPE;
-A DRASTIC REDUCTION OF THE POSSIBILITIES OF CONVENTIONAL WARFARE.

4. AN ADDITIONAL PROBLEM WILL ARISE ESPECIALLY FOR THE FEDERAL REPUBLIC OF GERMANY FROM THE FACT THAT ITS NATIONAL LAWS PERMIT THE INDIVIDUAL SOLDIER TO LEDGE COMPLAINTS WITH A COURT OF LAW AGAINST THE SERVICE AND TRAINING REGULATIONS OF THE FEDERAL ARMED FORCES. THE COMPATIBILITY OF NATO'S DEFENCE CONCEPT WITH THE NEW RULES OF INTERNATIONAL LAW MIGHT THUS BECOME THE SUBJECT-MATTER OF PROCEEDINGS BEFORE A SUPREME COURT.
END TEXT.STRAUSZ-HUPE

CONFIDENTIAL

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